MUNICIPAL CORPORATIONS—NON-LIABILITY FOR EXERCISE OF GOVERNMENTAL FUNCTION IN REFUSING BUILDING PERMIT.—X's application for a building permit in defendant city having been denied by its inspector of buildings, X brought mandamus proceedings against the officer and the city to compel the issuance of such permit, and prevailed. Defendants appealed, and, by agreement between the parties, a stay of all proceedings was entered; in this agreement it was stipulated that the filing of cost and supersedeas bonds was waived by X, "without waiving right to costs and damages to which he would be entitled if such bonds had been given." The order of the court below was affirmed on appeal, the permit was granted, and X erected the building. X now sues the city and its building inspector for damages for delay in the building operations. *Held,* that there could be no recovery. *Roerig* v. *Houghton,* (Minn., 1919) 175 N. W. 542.

It has been held that a municipal corporation is not liable for damages sustained by reason of a wrongful revocation of a building permit (*Lerch* v. *Duluth,* 88 Minn. 295), or of a license to exhibit a circus (*Kansas City* v. *Lemen,* 57 Fed. 905), but that the appropriate remedy is by injunction (*Stevens* v. *Muskegon,* 111 Mich. 72, *dictum*).The reason given is that the act complained of was within the scope of governmental functions, since the police regulations of a city are made and enforced in the interests of the public. *Claussen* v. *Luverne,* 103 Minn. 491. See the collection of cases in 18 L. R. A. (N.S.) 409 and in 34 L. R. A. (N.S.) 141. As to the liability of the inspector, the general rule is that a public officer cannot be held responsible in damages for the honest exercise of his judgment within his jurisdiction, however erroneous that judgment may be, provided he was acting judicially (*Randall* v. *Brigham,* 7 Wall. 523), or quasi-judicially (*Dillingham* v. *Snow,* 5 Mass. 547), but there is no exemption if he acts in a ministerial capacity (*McCord* v. *High,* 24 Ia. 336). The character of the act, rather than the character of the office, is the basis of the exemption. *Wall* v. *Trunbull,* 16 Mich. 228. In the instant case DIBELL, J., dissented on the ground that this was an action on contract, which the city could not escape.

PLEADING—PLEA IN ABATEMENT—CODE.—In conformity with Code Civ. Proc., N. Y., Sec. 498, which permits facts in abatement to be pleaded in the answer, together with defenses on the merits, it was *held* that the judgment of a federal court in that state for the plaintiff on a plea in abatement, which raised an issue of fact as to the jurisdiction of the court over the person of the defendant, should be that the defendant answer over. *Phil. & Reading Coal & Iron Co.* v. *Kever,* (C. C. A., 2d Circ., 1919) 260 Fed. 534.

For an excellent discussion of the incongruities and inconsistencies of present-day pleading in this matter of defenses in abatement and in bar, see *Sheppard* v. *Graves,* 14 How. 505, 509, 510. At common law where there was judgment for plaintiff on an issue of fact joined on a plea in abatement, the judgment was *quod recuperet, Brown* v. *Ill. Cent. Mut. Ins. Co.,* 42 Ill. 366; if on an issue of law, that the defendant answer over. The reason for this